DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

c/14444

FILE: B-185803 DATE: September 3, 1976

MATTER OF: McNamara-Lunz Vans & Warehouses, Inc. 98078

DIGEST:

1. Prior decision is affirmed where broadly and generally worded invitation provision requires bidders to obtain all necessary State, local, and Federal licenses necessary for contract performance without specifying any specific license or permit, since matter is not for contracting officer's consideration in determining bidder responsibility, and consequently our consideration of protest on basis of responsibility determination review would be inappropriate. Matter is one solely for contractor and license/permit issuing entity.

2. Treatment of State/local requirements versus Federal ones is not inappropriate since where definite, specific license is required, whether State/local or Federal, requirement affects responsibility, but where either or both are required only in general language, leaving matter to contractor and issuing entity, matter does not affect bidder responsibility. Appeal of question of possession of Federal license should properly be made to ICC and if adverse to contractor contract may be terminated for default.

Counsel for the protester requests reconsideration of our decision in McNamara-Lunz Vans & Warehouses, Inc., B-185803, July 8, 1976, 76-2 CPD 20, wherein we held that the broad, general language of a solicitation instruction that "The Contractor shall * * * be responsible for obtaining and maintaining any Federal, State, and/or local operating authorities, permits, licenses, etc. * * *" was a matter solely between the contractor and the entity responsible for granting such permits or licenses and that, therefore, such language meant that the determination of whether a license or permit had been obtained had no bearing on who received the award of the contract or on a bidder's responsibility.

Present counsel's first ground for reversal of our July 8 decision is that the contractor, Royal Transfer, Inc., does not have a valid agreement under ICC regulations to use the authority of Kings Van & Storage, Inc., for both interstate and intrastate shipments. This is similar to an argument made by the former counsel of McNamara-Lunz Vans & Warehouses, Inc. (McNamara), in support of its initial protest. Again, because of the broad, general language of the solicitation quoted above we feel that this is a matter for determination by the ICC, and any decision adverse to Royal would result in the termination for default of the contract now in dispute.

Secondly, counsel contends that our reliance on Illinois Glove Company, B-184739, September 24, 1975, 75-2 CPD 183, for the proposition that our Office will not review affirmative determinations of responsibility in the absence of an allegation of fraud is misplaced in a case where the requirement for legal operating authority must emanate from another Government agency. Counsel has apparently misinterpreted our July 8 decision because we did not rely on the referenced case but rather cited it as the authority the Air Force would have us use in not deciding the protest in the first instance. We went on to point out on page 3 of our decision, with appropriate citations, that another exception to the general rule that our Office will no longer consider affirmative responsibility determinations is where the solicitation contains definitive responsibility criteria which allegedly have not been applied. However, we found that neither exception applied as the requirement for a license was so broad as to not have any bearing upon the determination of responsibility.

Lastly, counsel urges that the exception regarding definitive responsibility criteria should be applied in this case notwithstanding the general language contained in the solicitation concerning possession of permits and licenses. In support of this contention it is argued that our reliance upon 51 Comp. Gen. 377 (1971) and 53 Comp. Gen. 51 (1973) related to cases in which State and local licensing requirements were in question and not, as indicated by the context of the decision, where Federal interstate authority was a requirement.

In 51 Comp. Gen. supra, we attempted to distinguish Federal license or permit requirements from the general State/local requirements that a prospective contractor was required to meet. In making this distinction the cases cited and relied on involved solicitations in which a definite requirement for a specific Federal license had been incorporated.

In 53 Comp. Gen., supra, we held that where an invitation contained definite requirements for specific State/local licenses the question of whether the bidder held such a license before award did affect its responsibility. Accordingly, we find no dichotomy in our treatment of State/local versus Federal license laws, be they specific or general.

Since there has been no showing that our decision of July 8 was in error as a matter of law or fact, it is affirmed.

Acting Comptroller General
of the United States